Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS

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SUMMARY

BellSouth urges the Commission to resist requests of many of the petitioners and commenters that the Commission impose additional requirements upon ILECs in connection with their obligations under Sections 251 and 252 of the 1996 Act. The Commission has already exceeded its lawful authority in many instances, and extreme caution should be exercised to avoid any further agency infringement upon matters which the 1996 Act left to local, consensual negotiations processes and, where necessary, state arbitration proceedings.

The Commission should not require ILECs to provide additional unbundled elements. Whether any further unbundling is appropriate is a matter which is more appropriately decided on a local level where differences in technical capabilities and needs can be better evaluated. In particular, the Commission should not require ILECs to further unbundle their local loops.

Nor should the Commission impose additional obligations and restrictions upon ILECs in connection with unbundling. For instance, whether or not additional reports should be provided is a matter which can be considered in negotiations processes. A national reporting requirement would ignore the essentially local nature of interconnection and unbundling arrangements.

The Commission should reject the contentions that ILECs be required to offer the common transport and dedicated transport unbundled elements as a single unbundled element priced on a usage-sensitive basis. Such a requirement would obligate ILECs to go beyond the 1996 Act's requirements that unbundled facilities be provided to a requirement that the ILEC itself must build a service from such unbundled elements for a requesting carrier. Moreover, such a requirement would ignore the non-usage sensitive nature of dedicated transport elements.

The Commission should recognize that access to all OSS capabilities on a non-discriminatory basis may not be technically feasible by the currently established deadline of

January 1, 1997. In extending the deadline, as the Commission should, the Commission would properly recognize this fact. Where such access is provided in those instances of technical feasibility, the failure to provide such access where not technically feasible cannot adversely impact the availability of Section 271 relief for the involved ILEC.

The Commission should not intrude further upon the cost and pricing matters left by the 1996 Act to the local negotiations processes. At a minimum, the Commission should defer acting upon requests for additional restrictions until the appeal of its First Report and Order to the Eighth Circuit has been decided. In particular, the Commission should reject contentions that ILECs' not be enabled to obtain full recovery for nonrecurring costs through nonrecurring charges. Additionally, the Commission should allow the operative provisions of the 1996 Act regarding compensation for transport and termination to govern, with each carrier entitled to receive only its own costs of transport and termination.

The contentions of some petitioners that access charges may not be assessed as a result of the Eighth Circuit Court's stay of the relevant rule are erroneous. With the stay, the provisions of Section 251(g) of the 1996 Act continue to operate to require the application of all access charges until superseded by the appropriate Commission rulemaking proceedings.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS

BellSouth Corporation, BellSouth Enterprises, Inc., and BellSouth Telecommunications, Inc. (hereinafter "BellSouth") submit their reply to the oppositions and comments which have been filed addressing the various petitions for reconsideration and/or clarification filed in this proceeding.

Many of the petitioners and commenters seek the Commission's imposition of further and additional mandatory requirements on incumbent local exchange carriers ("ILECs") in connection with their obligations under Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act").[1] The Commission must resist these requests. The Eighth Circuit has already determined that a substantial likelihood exists that the Commission has exceeded its jurisdiction in imposing the cost and pricing standards adopted by the First Report and Order,[2] and extreme caution

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[1] Pub.L.No. 104-104, 110 Stat. 56 (1996).

[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service

should be used to avoid any further agency infringement upon the role of local negotiations and state authorities with respect to such matters. BellSouth has already entered into numerous agreements with carriers lodging requests under Section 251, and these local, consensual arrangements, coupled with state arbitration proceedings where necessary, are working in much the manner intended by Congress. Thus, not only is there questionable authority for the Commission to intrude further into these processes, there is no practical need for further Commission interference.

The following comments, made in reply to the oppositions and comments filed in this proceeding, address a few of the specific requests for further Commission involvement in Section 251 and 252 matters, which should be left for local and state processes. As BellSouth demonstrates, in many of the instances addressed herein, such contentions ignore or misunderstand the existing statutory requirements and Congressional intent embodied in the 1996 Act.

I. REQUESTS THAT THE COMMISSION MANDATE FURTHER UNBUNDLING OF NETWORK ELEMENTS SHOULD BE DENIED

BellSouth supports those commenters who observe that the Commission should not establish further unbundling requirements.[3] To the extent that requesting carriers have the need for additional network facilities and equipment to be unbundled, those requests can be made during the negotiations processes and addressed, if necessary, in arbitration proceedings. It is in these local proceedings that issues such as technical feasibility can best be addressed, given the

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Providers, Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (August 8, 1996).

[3] See, e.g., Sprint at 2-3, Bell Atlantic at 18-20, GTE at 25-31.

varying extent to which specific network architectures, equipment, and technology have been deployed across the country. Indeed, it has been BellSouth's position in negotiations and arbitration proceedings that it will unbundle any requested network facility or equipment that meets the definition of a network element under the Act,[4] where technically feasible for BellSouth, and where consistent with the requirements of the Act.[5]

That the Commission should not mandate further unbundling is particularly true with respect to subloop unbundling, as several commenters state.[6] The Commission should reject the requests of others[7] that further unbundling of sub-loop components be required. The local negotiations processes and state proceedings are more appropriate places for evaluating whether or not various types of subloop unbundling can be accomplished and, in particular, whether it can be successfully accomplished without impairing network reliability and without otherwise violating the integrity of the network. Indeed, ILECs throughout the country--from ILEC to ILEC, from state to state, from region to region and from locale to locale--may well be utilizing different architectures and different technologies, as well as differing combinations of such architectures and technologies. Factors such as these could impact the technical feasibility of unbundling for each particular ILEC in any given locale. As Bell Atlantic states, there are no

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4 Under Section 3(29), a "network element" is defined as "a facility or equipment used in the provision of a telecommunications service." Thus, BellSouth sides with those commenters opposing requests that the Commission require dark fiber, which is not "used" in the provision of a telecommunications service, to be provided as an unbundled element.

5 See, e.g., Section 251(d)(2) of the Act.

6 See, e.g., Bell Atlantic at 13-15. Ameritech at 17-18.

7 See, e.g., MFS at 5, WorldCom at 13, ALTS at 16-17.

national standards for loop sub-elements or for the physical interconnection of sub-elements in the field.[8] As GTE also observes, many networks are not designed to allow disaggregated interfaces at points along the subscriber loop.[9] It is simply not necessary for the Commission to interfere with the current ongoing processes at local and state levels of ferreting out just what is technically feasible and what is not.

II. REQUESTS THAT THE COMMISSION SHOULD IMPOSE ADDITIONAL OBLIGATIONS AND RESTRICTIONS ON ILECS SHOULD BE DENIED

Several commenters support the imposition of additional requirements upon ILECs. In many cases, these commenters ignore the fact that many requests can be made as a part of the negotiations process and worked out consensually by the parties. In other cases, they ignore the explicit statutory requirements of the 1996 Act. A few of these are highlighted below.

A. Requests For Additional Reporting Requirements Can Be Appropriately Considered As A Part Of Negotiations And Arbitration Proceedings.

Several parties address petitioners' requests that the Commission impose additional reporting requirements, some supporting such requests[10] and others opposing such requests.[11] The Commission should deny those requests. As a preliminary matter, a national reporting requirement would ignore the essentially local nature of interconnection and unbundling arrangements. Although the Commission, in the First Report and Order, established overall interconnection and unbundling requirements (and has, in many cases, exceeded its authority in

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8 Bell Atlantic at 13.

9 GTE at 27.

10 See, e.g., WorldCom at 6-7; MCI at 16-18, 21; CompTel at 4; and Sprint at 1-2.

11 See, e.g., Bell Atlantic at 16-17. Ameritech at 15-16.

doing so), the specific requirements to which ILECs will be required to adhere will be the result of negotiations and, where necessary, arbitration proceedings. Numerous terms, conditions, and prices may result from such proceedings, and these may well vary extensively nationwide. Given such variances, it would be unreasonable, as well as overly burdensome, to require ILECs across the country to track the same sorts of detailed information on uniform reporting schedules and forms.[12] A national reporting requirement would ignore the fact of such legitimate variances and, indeed, standardized reports on varying requirements would be difficult to prepare and to interpret. Since the requirements to which ILECs must adhere will be the result of local negotiations and state proceedings, any compliance reporting should be a matter for state commissions to determine.

B. A Rebundling Of Common And Dedicated Transport Facilities Into A Common Transport Service Would Constitute The Provision Of A Service, Not An Unbundled Element Under The 1996 Act.

Several of the commenting parties address the issue of "shared" transmission facilities and the nature of the Commission's unbundling and pricing requirements with regard to "common" transport.[13] Several support WorldCom's request that the Commission should require ILECs to offer the "shared" unbundled element between the end-office and tandem, and the dedicated unbundled element between the tandem and serving wire center as a rebundled single element at a usage-based rate which ignores the fact of tandem-routing. BellSouth opposes this request for many of the same reasons set forth by Ameritech.[14]

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12 See, e.g., Bell Atlantic at 16.

13 See, e.g., WorldCom at 3-6; MCI at 18-19; CompTel at 2-4; Sprint at 5-6.

14 Ameritech at 6-11.

Additionally, WorldCom's request is not only a request for a rebundling of two unbundled elements into a service rather than unbundled facilities, but for a modification of the pricing guidelines established in the 1996 Act. Section 252(d)(1) provides that the pricing for an unbundled element shall be "based on the cost... of providing" it. The "common" transport rebundled option which WorldCom and others request would consist of "common" transport between an ILEC's local end office and tandem plus dedicated transport between the ILEC's tandem and the serving wire center. Clearly, the costs of the dedicated transport are not usage-sensitive. The dedicated facility will be dedicated to the purchaser of the unbundled dedicated transport, the ILEC will have no control over the extent to which the purchaser uses the facility, and the ILEC's costs will remain constant whether the purchaser decides to place no, one or 10,000 minutes of use on the facility. To permit the rebundling of this dedicated transport with the "common" portion into a single rebundled element at a usage-based price would ignore that the costs of providing the dedicated transport are not usage-sensitive.

The same is essentially true with respect to the portion of the "common transport" between the end office and tandem where the ILEC's local end office and tandem are not involved. Indeed, the unbundling of such transport from the ILEC's switching reverts the facility to dedicated transport, i.e., transport which is dedicated to one purchasing entity. As Ameritech states, that purchasing entity can decide whether it wishes to utilize that facility in common for multiple customers of its own, and charge such customers usage-sensitive rates for that sharing. However, the ILEC would have no control of the extent to which such transport is used, could not use it for its other customers, and thus, the identity of such transport as common would be lost.

Several commenters contend that the Commission must require a usage-based option for the rebundling of the two unbundled elements (dedicated between the tandem and serving wire center, and common between the ILECs' end-office and tandem) for the same reasons it imposed such a requirement for ILEC's interstate access switched transport services.[15] This overlooks the fundamental differences between unbundled elements and the restructured switched access transport services. In the Commission's Local Transport Restructure proceeding,[16] the Commission was attempting to arrive at a rate structure for an access service provided by ILECs to their own customers, i.e., ILEC's switched access transport services, rather than for unbundled facilities under the 1996 Act from which a purchaser could create its own service offerings for its own customers, as is the case here. In addition, the new rate structure was to be an alternative to the usage-based rate structure for switched access transport services which had historically been applied and which favored smaller carriers, who could not take advantage of large dedicated facilities, over larger carriers, who could. The Commission required ILECs to offer a usage-based common transport option for transport between the end office and serving wire center (without regard to the location of the tandem) in order to ease the transition from the historical wholly usage-based charges to dedicated facility charges for smaller carriers. Indeed, the resulting transport service structure was, and is, a transitional and interim measure pending adoption of a more fully cost-based permanent rate structure.

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15 Sprint at 5-6; CompTel at 2-3; WorldCom Petition at 5-6.

16 Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket 91-213, 7 FCC Rcd 7006 (1992) (subsequent history omitted).

The 1996 Act requires the unbundling of facilities and equipment, not the creation of services. Moreover, the Act provides no basis for the adoption of a transitional mechanism to protect smaller purchasers of unbundled elements who may not be able to take advantage of large dedicated facilities to the same extent as larger users. Nor is there a need for such a transitional mechanism. Carriers need not purchase unbundled elements if they desire not to. The interim local transport restructure rate structure is available to any access customer desiring to take advantage of it as a part of switched access services. More importantly, the Act specifically requires that unbundled elements be based upon the costs of providing them. Although the Act requires ILECs' to provide unbundled elements meeting the Section 3(29) definition, it places no requirement or obligation on ILECs to rebundle the network elements to create a different service. Rather, if a purchaser of unbundled common transport and dedicated transport desires to utilize those in a combined manner and share them with other entities, thus creating a shared or common transport offering of its own, that is for the purchaser to handle as a matter of its own service offerings.

C. An Extension Of The Deadline For Providing Access To OSS Functionalities Can Not Adversely Impact The Availability Of Section 271 Relief.

WorldCom suggests that even if the Commission extends the deadline for ILECs' compliance with the Commission's requirement for nondiscriminatory access to OSS capabilities, the Commission should refuse an ILEC's application for interLATA relief under Section 271 until that ILEC has provided such nondiscriminatory access.[17] The Commission should reject this contention, as it contradicts the requirements under the 1996 Act.

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[17] WorldCom at 8.

The conditions under which interLATA relief is available are set forth under Section 271. The relevant requirement under Section 271, Section 271 (c)(2)(B)(ii), is that such access to unbundled elements (which the Commission considers OSS capabilities to be and which BellSouth maintains are not) must be provided "in accordance with the requirements of Sections 251(c)(3)...." This latter section imposes an obligation to provide access to unbundled elements only where "technically feasible."

ILECs are requesting the Commission to extend the existing January 1, 1997 deadline for the provision of access to OSS capabilities on the basis that such access is not technically feasible by that date. As BellSouth explained in its Opposition and Comments, the Commission's determination to establish the existing January 1, 1997 deadline was based on its reliance upon a then-existing state commission deadline, which has since been extended, and its failure to appreciate the complexity of the development work needed.[18] While nondiscriminatory access to some OSS capabilities may be available by January 1, 1997, development work for the provisioning of access to others may be so technically complex and time-consuming that access to these may not be technically feasible by that date. The Commission must, therefore, extend its deadline. An extension of the deadline would constitute the Commission's recognition of the technical infeasibility of this deadline for access to some functions. Where such access is provided in those instances where technically feasible, the failure to provide such access in other instances where not technically feasible cannot adversely impact the availability of Section 271 relief for the involved ILEC.

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[18] BellSouth at 7-8.

III. THE COMMISSION SHOULD NOT INTRUDE UPON COST AND PRICING MATTERS LEFT BY THE 1996 ACT TO LOCAL NEGOTIATIONS AND STATE PROCEEDINGS

As BellSouth indicated in its Opposition and Comments, the Commission does not have jurisdiction to determine the pricing and cost rules established in the First Report and Order for interconnection, unbundled elements, resale, and transport and termination. Others echo this view.[19] Nevertheless, given that several commenters address certain specific matters related to costs and pricing, further comment is warranted here.

A. The Commission Should Defer Any Further Action On Cost And Pricing Rules Until The Appeal Of The First Report And Order To The Eighth Circuit Has Been Decided.

BellSouth supports Ameritech's suggestion[20] that the Commission defer any action on further cost or pricing rules until the appeal has been decided. The existing rules on cost standards and pricing have been stayed by the Eighth Circuit based upon its view that there is a substantial likelihood that the Commission exceeded its jurisdiction in promulgating them. For the Commission to act upon petitioners' requests that the Commission impose further cost and pricing constraints upon ILECs' would complicate matters even further. Pending the stay, the local, consensual negotiations are continuing and state commissions are arbitrating disputed matters in the very manner contemplated by the Act. Given the likelihood that the Commission's rules will be overturned and given the continuation of local and state processes in the interim, there is no need for the Commission to act.

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19 Bell Atlantic at 1-3.

20 Ameritech at 2.

B. The Commission Should Reject Petitioners' Contentions That Ilecs' Be Restricted From Obtaining Full Compensation For The Nonrecurring Costs Imposed By New Entrants.

BellSouth supports the positions of several commenters[21] which demonstrate the invalidity of the requests of new entrants, and, in particular, of AT&T, for restrictions on the ability of ILECs to recover from new entrants the nonrecurring costs which are, in fact, caused by such new entrants. BellSouth opposes AT&T's suggestions, which are echoed by several commenters,[22] that nonrecurring costs be based solely upon a TELRIC costing standard, that charges be capped at a $5.00 level, and the ILECs should bear the major portion of nonrecurring costs. As Bell Atlantic states, such requirements are not in compliance with the Act's specific statement that the costs of interconnection and unbundling be based upon the cost of providing them and may include a reasonable profit.[23] Indeed, AT&T's proposals would force ILECs' customers to subsidize AT&T's (and other interconnector's) operations even though the costs incurred were imposed by them. Additionally, AT&T's suggestion that OSS nonrecurring costs be recovered in the recurring charges for other unbundled elements would appear to violate the Act's requirement of cost-based pricing for each unbundled element.[24] Moreover, nonrecurring charges which

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21 See, e.g., Bell Atlantic at 3-4; Ameritech at 20-24; GTE at 14-21.

22 See, e.g., WorldCom at 19-20; ALTS at 2-5; CompTel at 5.

23 Section 252(d)(1).

24 GTE at 20.

recover their full costs are traditional within the industry.[25] To require that such costs be recovered in recurring charges over recurring demand can send incorrect economic signals.[26]

Finally, as Ameritech states,[27] it should be left to local negotiation processes to determine the agreed-upon charges and rate levels for nonrecurring activities just as for recurring activities. Where agreement cannot be achieved, the states, through the arbitration process, can determine the just and reasonable charges.

C. Determinations Regarding The Appropriate Transport And Termination Charges Should Be Left For Private, Consensual Negotiations And, Where Necessary, State Arbitration Proceedings.

The Local Exchange Carrier Coalition ("LECC") has requested that the Commission revise its existing pricing rules to permit interconnectors to negotiate rates for transport and termination and to remove the requirement that an ILEC must compensate an interconnector for the tandem switching even where it does not have a tandem switch. BellSouth supports that request.

AT&T states that the LECC's request that ILECs' not be required to compensate interconnectors for tandem switching which they do not perform would allow ILECs to obtain an "improper and discriminatory competitive advantage" over interconnectors.[28] On the contrary, it is discriminatory for the ILEC to have to compensate the interconnector for costs which the interconnector does not incur. Moreover, AT&T's assertion that the proposed revised rule would

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25 GTE at 15-16.

26 GTE at 17.

27 Ameritech at 20-24.

28 AT&T at 23.

incent ILECs to build tandems where they are otherwise unnecessary or inefficient is absurd. Where the ILEC is only being compensated at a TELRIC rate, as the Commission has required, no incentive whatsoever is built into the structure for ILECs to overbuild, as they would not be sufficiently compensated.

More importantly, as Ameritech observes,[29] the Act provides that each carrier is entitled to recover, in transport and termination compensation, its own costs of transporting and terminating traffic which originated on another carrier's network.[30] Thus, there can be no requirement imposed that a new LEC must be compensated for costs associated with functions it does not perform or costs which it does not incur. Above all, the appropriate compensation for transport and termination should be left for interconnectors to agree upon among themselves through the negotiation process and, where necessary, through arbitration.

IV. THE ASSESSMENT OF ACCESS CHARGES FOR THE ORIGINATION AND TERMINATION OF INTERSTATE CALLS UTILIZING THE ILECS' LOCAL EXCHANGE NETWORKS MUST CONTINUE PENDING THE APPROPRIATE COMMISSION RULEMAKING PROCEEDING

Several commenters discuss the Commission's transitional access charge requirement.[31] CompTel has appealed the Commission's requirement that CCL charges and the TIC apply for purchasers of unbundled local switching, and BellSouth is opposing that appeal. Nonetheless, certain assertions of these commenters regarding the status of access charges in the interim merit discussion here.

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29 Ameritech at 30-32.

30 Section 252(d)(2).

31 See, e.g., MCI at 24-25; CompTel at 7-9; AT&T at 22-23; Sprint at 13-14.

WorldCom takes the position that the stay issued by the 8th Circuit Court of Appeals has the result that no access charges may be assessed for unbundled elements.[32] WorldCom believes that the continued assessment of access charges by ILECs, in addition to charges under Section 251 for unbundled elements, would violate the Act by "over-recovering their costs of providing network elements."[33] This position ignores the plain language of Section 251(g) of the Act. Under Section 251(g), access charges apply to unbundled elements when used for the purposes of exchange access up until such time as the Commission's access charge restrictions and obligations "are explicitly superseded by regulations prescribed by the Commission."[34] Although the Commission attempted to supersede such requirements in its promulgation of Section 51.515(a) of its rules,[35] that rule was among those stayed by the 8th Circuit. The existing requirement that access charges continue to be applied, therefore, has not been "explicitly superseded" by Commission rule. Indeed, given the extensive ramifications which an immediate cessation of access charges would have upon ILECs' revenue stream, the Commission can supersede the requirement that access charges apply only through the appropriate rulemaking proceedings, such as the Commission's current universal service proceeding and its proposed access reform proceeding.

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32 WorldCom at 10.

33 WorldCom at 11.

34 Section 251(g).

35 Section 51.515(a) provided that no access charges could be assessed "on purchasers of elements that offer telephone exchange or exchange access services." Section 51.515(b) provided for the transitional application of certain access charges (carrier common line charges and 75% of the transport interconnection charge) upon purchasers of unbundled local switching.

The Commission should reject CompTel's contention that the Commission cannot permit access charges, and, in particular, the transport interconnection charge, to continue beyond the current June 30, 1997 deadline in light of the recent decision of the D.C. Circuit Court of Appeals regarding the Commission's Local Transport Restructure plan.[36] While it is true that such decision directed the Commission to "move expeditiously to a cost-based alternative...or provide a reasoned explanation why a departure from a cost-based system is necessary and desirable,"[37] the full impact of the 1996 Act was not considered in that decision.[38] Moreover, the Commission is moving expeditiously to review its access charge rules. Already underway at the present time is, its universal service proceeding, and the Commission has indicated that it will initiate its access reform proceeding within the next month. Existing access charges must be permitted to continue to apply to all users of the ILECs' networks for access purposes pending the outcome of such proceedings.

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[36] CompTel at 9. Competitive Telecommunications Association v. FCC, 87 F.3d 522 (CD.C.Cir. 1996).

[37] Id. at 526.

[38] Indeed, the court determined that its decision was "not merely advisory" on the basis of the Commission's view, at the time, that the interconnection obligations imposed under the 1996 Act would not apply to interexchange carriers seeking such interconnection for the purpose of originating and terminating interexchange traffic. Id. at 528-529. The Commission thereafter determined that unbundled elements under Section 251(c) (3) of the Act (except for unbundled common lines and unbundled local switching) may be used by interexchange carriers even where for the sole purpose of originating and terminating their own interexchange traffic. First Report and Order at paras. 268-271, 356-365; and Section 51.309 of the Commission's rules.

V. CONCLUSION

For all of the reasons set forth herein, the Commission should reject the requests of petitioners which seek to have the Commission impose additional obligations and restrictions upon ILECs in connection with the provisions of Sections 251 and 252 of the 1996 Act.

Respectfully submitted,

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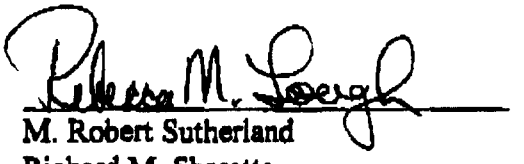
By: 

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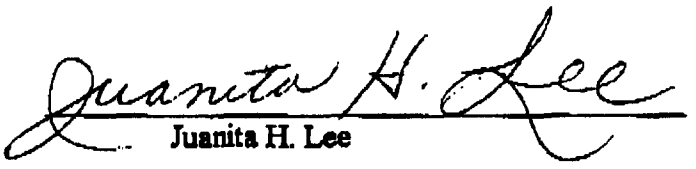
I hereby certify that I have this 14th day of November, 1996 served all parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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